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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,138	05/25/2001	Charles M. Schmeichel	A20-012-01-US	4445

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EXAMINER

PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/866,138

Applicant(s)

Schmeichel

Examiner

Dennis H. Pedder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Reissue Applications*

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,906,407 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

2. The reissue oath/declaration filed with this application is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is *wholly or partly inoperative or invalid*. See 37 CFR 1.175(a)(1) and see MPEP § 1414. *OK*

3. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. Applicant's statement is merely a general allegation. *Still*

4. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the

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time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414. OK

5. Claims 1-32 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. [Signature]

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

### AMENDMENTS

Applicant is reminded of the provisions of Rule 173 regarding amendments in a reissue application.

### *Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-14, 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 8 are indefinite as applicant has not defined any block means or adjustable connection means in the specification as claimed. The bounds of these terms are not clear as a result in conflict with the statute. The specification is thus objected to as a result.

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Claim 30 is incorrect as applicant has claimed both the side rail attachment block mechanisms and the tensioning rail attachment blocks, but incorrectly recited "screw members adjustably contacting said tensioning rail" whereas the screw members contact only the above recited tensioning rail attachment blocks.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 15, 19, 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the prior art as admitted by applicant or Wheatley, US 5,934,735, in view of either Buratovich or Beatriz et al.

Applicant admits that tensioning of the front rail of a tonneau cover, which has typically been constructed of canvas or vinyl coated canvas, is problematic in the prior art because tensioning variation induced adjustment is awkward and difficult. Wheatley teaches a step adjustment of such a rail via slots 54,56, leaving only selected incremental tension adjustment.

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The art of canvas securement to a supporting frame has several prior teachings of how to compensate for tension adjustment in the material as evidenced by the patents to either Buratovich or Beatriz et al., using for the former side rail attachment brackets 33, tensioning rail attachment brackets or members 22, and a threaded screw member for applying force to either the tensioning rail member or bracket hence to the tensioning rail itself in Buratovich and side rail attachment brackets 12, tensioning rail attachment brackets or members 12 formed in one piece with the side rail bracket 12, and a threaded screw member 24,26 for applying force to the bracket and tensioning rail itself. References to Buratovich and Beatriz et al. are deemed to be relevant to the problem of applicant under the second tier test of *In Re Wood*, 202 USPQ 171 (CCPA 1971) and are hence charged to applicant and in the public domain. As a result, no patent can be issued for these features alone. It would have been obvious to one of ordinary skill in the art to provide in either the prior art as admitted by applicant or Wheatley a easily adjustable rail mechanism as taught by either Buratovich or Beatriz et al. in order to eliminate the problems admitted by applicant in the prior art or to improve on the tension adjustment of Wheatley by providing continuous adjustment of the tension in the cover.

As to claim 23, the block 12 of Beatriz et al. is attached to the side rail and carries screw 24.

As to claim 24, the end rail of Wheatley is slidingly engaged with the side rails at member 16, deemed to be representative of the prior art admitted by applicant as a matter of common knowledge.

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As to claim 25, both Buratovich and Beatriz et al. teach opposite side placement of the blocks and screws.

Note that claim 29 is objected to for the term "a threaded screw members (plural).

10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the prior art as admitted by applicant or Wheatley, US 5,934,735, in view of Buratovich.

The tension screw 38 of side rail bracket 33, for example, applies a force to tension rail bracket 22. It would have been obvious to one of ordinary skill in the art to provide in either the prior art as admitted by applicant or Wheatley a easily adjustable rail mechanism as taught by Buratovich in order to eliminate the problems admitted by applicant in the prior art or to improve on the tension adjustment of Wheatley by providing continuous adjustment of the tension in the cover.

***Allowable Subject Matter***

11. Claims 1-14, 30 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 251 and 112, second paragraph, set forth in this Office action.

12. Claims 16-18, 20-22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 251 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. Claim 32 would be allowable if the rejection under 35 U.S.C. 251 is overcome.

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14. The following is a statement of reasons for the indication of allowable subject matter: The references of record do not detail, for claims 1-14, a screw thread connection that also connects the side and tension rail. The references of record, for claims 16-18 and 20-22, do not detail a tensioning rail attachment chamber nor coaxially aligned threaded openings in the side rail attachment bracket. The references of record do not detail, for claims 30, 32, the side rail attachment block with screw members engaging the tensioning rail or applying force to the tensioning rail, respectively.

*Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Banks and Azuma et al. are cited to show other frame adjustment mechanisms.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pedder whose telephone number is (703)308-2178. Fax amendments to expedite handling should be sent to (703) 305-7687.

DHP

June 28, 2002



Dennis H. Pedder  
Primary Examiner  
Art Unit 3612

7/8/02